

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:08-cr-441-T-17MAP

PHILIP WILLIAM COON

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**MOTION OF DEFENDANT COON FOR CLARIFICATION AND/OR  
RECONSIDERATION OF ORDER REGARDING  
MOTION FOR DISCLOSURE OF PRESENTENCE REPORT**

Defendant Coon moves the Court for clarification or, in the alternative, for reconsideration, of its amended order regarding Borrower's motion for disclosure of portions of the presentence investigation report ("PSR"). Mr. Coon seeks clarification that the Court did not intend to grant Borrowers' motion. In the alternative, Mr. Coon moves the Court to reconsider and deny the motion. The grounds supporting this motion are set forth in the following memorandum.

**MEMORANDUM**

On December 22, 2008, this Court entered an order granting various motions to recognize Coast Bank Borrowers as victims pursuant to the ruling of the panel majority of the Eleventh Circuit Court of Appeal. Doc. 33. The Court's order indicates that it vacates the orders previously denying such motions and then

orders that the motions are granted. Doc. 33. The order cites docket entries 17, 20, and 30 for both matters. This appears to have been a scrivener's error and that the Court intended to note both the orders denying the previous motions as well as the motions now to be granted. In light of this, the Court later that day entered an amended order. Doc. 34. The amended order cites documents 17, 20, and 31 as the previous orders of denial being vacated. The amended order then cites documents 12, 16, 18, 19, and 30 as motions now being granted. Documents 12, 18, 19, and 30 are indeed motions made by various Borrowers to be designated victims. Document 16, however, is not a motion requesting Borrowers to be determined to be victims. It is, instead, a motion for disclosure of portions of the Defendant's PSR. This motion was previously denied by the Court prior to any response to it by the parties. The Court's amended order appears to grant this motion even though it addresses a subject not litigated before the Eleventh Circuit and as to which the parties have never responded.

Mr. Coon first requests clarification from the Court because it appears possible that the Court's grant of docket 16 was inadvertent. The only stated basis for the entry of the order and amended order on December 22, 2008, was the ruling of the Eleventh Circuit. The Eleventh Circuit did not address disclosure of the

PSR. Accordingly, Mr. Coon seeks as a threshold matter a clarification that the Court's amended order should be clarified to omit reference to docket 16 as having been granted.

In the alternative, if it was the Court's intention to grant the Borrowers' motion, Mr. Coon moves the Court for reconsideration of that order. Presentence investigation reports are confidential records of the Court. Pursuant to Local Rule 4.12(h), presentence reports may not be disclosed except by "written petition to the court establishing with particularity the need for specific information believed to be contained in such records." Likewise, under 18 U.S.C. Sections 3552(d) and 3664(b), and Federal Rule of Criminal Procedure 32(e)(2), presentence investigation reports are to be provided only to the defendant, the defendant's counsel, and the attorney for the government.

The courts have uniformly concluded that the Crime Victims Rights Act (CVRA) does not entitle victims to access to confidential presentence investigation reports. *See United States v. Brock*, 262 Fed. Appx. 510 (4th Cir. 2008) (unpublished) (district court properly denied victim access to portions of PSR); *United States v. Citgo Petroleum Corp.*, 2007 WL 2274393 (S.D. Texas 2007) (CVRA does not require disclosure of presentence investigation reports); *United States v. Sacane*, 2007 WL 951666 (D. Conn. 2007) (victim does not have right

under CVRA to obtain information contained in presentence report); *Kenna v. United States*, 453 F.3d 1136 (9th Cir. 2006) (district court properly denied victims' request for disclosure of PSR); *United States v. Ingrassia*, 2005 WL 2875220 (E.D.N.Y. 2005) (CVRA does not require disclosure to victims of any portion of presentence investigation report). The courts are virtually uniform on this point. The only case from any jurisdiction which has ever granted a victim access to a portion of a PSR involved a defendant who had died prior to the disclosure. *United States v. Schlette*, 842 F.3d 1574 (9th Cir. 1988)<sup>1</sup>

In addition to the uniform law against disclosing PSRs to victims, it also bears noting that the Borrowers in this case have proffered no reasonable basis for a need for such disclosure. Specifically, the Borrowers seek disclosure of the portions of the PSR identifying the victims and the amounts of restitution to be awarded to them. Doc. 16.<sup>2</sup> Existing law, however, provides clear and entirely

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<sup>1</sup>The reasoning of that case has since been questioned by other courts. *See, e.g., United States v. Corbitt*, 879 F.2d 224, 234 (7th Cir. 1989). Undersigned counsel for Defendant Coon has also conferred with the United States Probation Officer assigned to this matter, who advised that he is unaware of any previous order directing disclosure of a PSR in the history of this District.

<sup>2</sup>Although the Borrowers' motion states that it seeks only those portions of the PSR which identify the victims and their proposed restitution, Doc. 16, the Borrowers have subsequently filed what they style not as a motion but as a "reassertion of rights." Doc. 35. Curiously, in this document the borrowers assert that they also seek disclosure of the portions of the PSR relating to the calculation of the advisory sentencing guidelines. *Id.* No motion requesting such additional

sufficient processes for the determination of restitution without resort to disclosure of PSRs. *See* 18 U.S.C. § 3664(d)(1), (d)(2), (d)(5). Obviously the Borrowers should know themselves who they are. Moreover, the information regarding restitution allegedly owed to the Borrowers will presumably have been submitted by the Borrowers themselves. The notion that the Borrowers have no way to learn who they are or how much they have been harmed other than by reading the Defendant's PSR is on its face nonsensical. The request instead amounts to a request to "check the work" of the probation office to see if the information they themselves submitted has been reflected in the PSR to their satisfaction. But the Borrowers have no basis to assert that the Probation Office will reflect their information in the PSR incorrectly. The motion thus amounts to a fishing expedition based on pure and unfounded speculation. If disclosure of the PSR is necessary in this case then it will be necessary in every case involving a victim. This would turn existing and settled law on its head.

In any event, the Borrowers are certainly free to submit their identities and proof of loss directly to the Court and have indicated already that they intend to do so. They have no need to obtain information they themselves originated through disclosure of a confidential Court document.

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relief has been filed to date.

The Borrowers also assert that they require information from the PSR regarding “the Government’s position as to why Coast Bank is an alleged victim and why the Borrowers are allegedly not.” Doc. 16. The Government’s position on these matters is fully evident from their multiple pleadings both in the Eleventh Circuit in this case and in the district court in the related case involving Co-Conspirator Miller. The Borrowers have no need to obtain disclosure of the PSR for such information, to extent that the PSR even contains such information.

For the above reasons, Mr. Coon moves the Court for clarification that its amended order was not intended to grant the Borrower’s motion for disclosure of portions of the PSR. In the alternative, Mr. Coon moves the Court for reconsideration of its order and submits that the Borrowers’ motion for disclosure of the PSR should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 30, 2008, I electronically filed the foregoing with the Clerk of the Court which will send a notice of electronic filing to:

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*/s/ James E. Felman* \_\_\_\_\_